

ORIGINAL

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June 29 2009

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CLERK OF THE SUPREME COURT
STATE OF MONTANA

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PRO9-0384

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Office of Disciplinary Counsel

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

BEFORE THE COMMISSION ON PRACTICE OF THE
SUPREME COURT OF THE STATE OF MONTANA

IN THE MATTER OF STEVEN S. CAREY,

An Attorney at Law,

Respondent.

) Supreme Court Cause No.

) ODC File No. 08-194

) COMPLAINT

By request of a Review Panel of the Commission on Practice, the Office of Disciplinary Counsel for the State of Montana ("ODC") hereby charges Steven S. Carey with professional misconduct as follows:

General Allegations

1. Steven S. Carey, hereinafter referred to as Respondent, was admitted to the practice of law in the State of Montana in 1984, at which time he took the oath required for admission, wherein he agreed to abide by the Rules of Professional Conduct, the Disciplinary Rules adopted by the Supreme Court, and the highest standards of honesty, justice and morality, including but not limited to, those outlined in parts 3 and 4 of Chapter 61, Title 37, Montana Code Annotated.

1 2. The Montana Supreme Court has approved and adopted the Montana Rules of
2 Professional Conduct ("MRPC"), governing the ethical conduct of attorneys licensed to practice
3 in the State of Montana, which Rules were in effect at all times mentioned in this Complaint.

4 **Count One**

5 3. ODC realleges and incorporates paragraphs 1 through 2 of the General
6 Allegations as if fully restated in this Count One.

7 4. On July 8, 2005, Shelly Anderson ("Anderson") was injured in a motor vehicle
8 accident while operating her Dodge Durango. The accident was allegedly caused by the
9 negligence of the operator of another vehicle, Helen Dixon ("Dixon").

10 5. Anderson retained Respondent's law firm, on a contingent fee basis, to pursue
11 claims for damages on her behalf. Tracey Morin ("Morin"), an attorney employed by
12 Respondent's firm, the Carey Law Firm, was Anderson's primary attorney.

13 6. At the time of the accident, Anderson had automobile insurance with Austin
14 Mutual Insurance Company ("Austin").

15 7. At the time of the accident, Dixon had automobile insurance with Allied Property
16 and Casualty Insurance Company ("Allied").

17 8. Anderson received \$13,550 from Austin for property damage. Austin claimed a
18 right of reimbursement from any monies collected from Allied for property damage.

19 9. On or about September 19, 2005, Allied sent Carey Law Firm a check for
20 property damage in the amount \$7,910.40. The check represented the balance of Dixon's policy
21 limits for property damage after deducting amounts previously paid for certain expenses. The
22 check was made out to Anderson, Carey Law Firm and Austin.
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1 10. On September 22, 2005, Respondent endorsed Allied's check and deposited the
2 check into the firm's trust account. Respondent did not inform Austin of his firm's receipt of the
3 check or obtain Austin's endorsement prior to negotiating the check.

4 11. On October 28, 2005, Morin sent Anderson a check for \$4,852.27, representing
5 the balance of the \$7,910.40 after Carey Law Firm deducted a one-third fee of \$2,636.80,
6 advanced costs of \$49.33 and a \$372.00 for payment for a payday loan Anderson owed.

7 12. In April 2006, Tom Bernhardt ("Bernhardt") of Frontier Adjusters, retained by
8 Austin, ascertained from Allied that it had sent a property damage check in the amount of
9 \$7,910.40 to Carey Law Firm.

10 13. In violation of Rule 1.15, MRPC, Respondent failed to promptly notify Austin of
11 his firm's receipt of the \$7,910.40.

12 14. In violation of Rule 1.15, MRPC, Respondent failed to promptly deliver said
13 funds to Austin or, alternatively, keep the funds separate until any dispute was resolved.
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15 **Count Two**

16 15. ODC realleges and incorporates paragraphs 1 through 2 of the General
17 Allegations and paragraphs 4 through 12 of Count One as if fully restated in this Count Two.

18 16. June 15, 2006, Bernhardt contacted Morin and advised her that Austin would
19 want the \$7,910.40 and indicated that Austin might contact the bank for the Carey Law Firm
20 concerning the bank's acceptance of the check without Austin's endorsement.

21 17. June 16, 2006, Respondent contacted Bernhardt and asked that Austin not contact
22 his bank and that he would send a check to Austin. On the same day, Respondent's firm sent a
23 check drawn from the firm's operating account to Bernhardt for \$5000.00, not \$7,910.40,
24 payable to Austin.
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1 18. Respondent's payment to Austin of \$5,000.00 was made without Anderson's prior
2 knowledge or consent. Respondent subsequently charged Anderson for the \$5,000.00 that he
3 paid to Austin and recouped that amount from Anderson.

4 19. Respondent's conduct, as described herein, constitutes violations of Rules 1.2 and
5 1.4, MRPC.

6 **Count Three**

7 20. ODC realleges and incorporates paragraphs 1 through 2 of the General
8 Allegations, paragraphs 4 through 12 of Count One, and paragraphs 16 through 18 of Count Two
9 as if fully restated in this Count Three.

10 21. Respondent's charging, collection and retention of a one-third contingent fee from
11 the \$7,910.40, under the facts and circumstances, was unreasonable and/or Respondent's
12 charging and collection of the \$5,000.00 he paid to Austin Mutual, under the facts and
13 circumstances, was unreasonable.

14 22. Respondent's conduct, as described in this Count Three, constitutes a violation of
15 Rule 1.5, MRPC.

16 **Count Four**

17 23. ODC realleges and incorporates paragraphs 1 through 2 of the General
18 Allegations, paragraphs 4 through 12 of Count One and paragraphs 16 through 18 of Count Two
19 as if fully restated in this Count Four.

20 24. Respondent's payment of \$5,000.00 to Austin on Anderson's behalf constitutes a
21 violation of Rule 1.8(e), MRPC.

22 25. In addition to the \$5,000.00 referred to in paragraph 24, Respondent's firm, in
23 multiple violations of Rule 1.8(e), MRPC, made, during the period from September 2005
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1 through September 2008 inclusive, approximately 42 advances to six clients totally
2 approximately \$29,190.00. Said payments were made by Respondent, authorized by
3 Respondent, or ratified by Respondent.

4 WHEREFORE, the Office of Disciplinary Counsel prays:

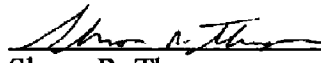
5 1. That a Citation be issued to the Respondent, to which shall be attached a copy of
6 the complaint, requiring Respondent, within twenty (20) days after service thereof, to file a
7 written answer to the complaint;

8 2. That a formal hearing be had on the allegations of this complaint before an
9 Adjudicatory Panel of the Commission;

10 3. That the Adjudicatory Panel of the Commission make a report of its findings and
11 recommendations after a formal hearing to the Montana Supreme Court, and, in the event the
12 Adjudicatory Panel finds the facts warrant disciplinary action and recommends discipline, that
13 the Commission also recommend the nature and extent of appropriate disciplinary action, and,
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15 4. For such other and further relief is deemed necessary and proper.

16 DATED this 26th day of June, 2009.

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19 Shaun R. Thompson
20 Disciplinary Counsel
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Shaun R. Thompson
Disciplinary Counsel
P.O. Box 1099
Helena, Montana 59624-1009
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BEFORE THE COMMISSION ON PRACTICE OF THE
SUPREME COURT OF THE STATE OF MONTANA

IN THE MATTER OF STEVEN S. CAREY

An Attorney at Law,

Respondent.

) Supreme Court Cause No.
) ODC File No. 08-194

) **CITATION TO APPEAR IN ANSWER TO**
) **COMPLAINT OF THE OFFICE OF**
) **DISCIPLINARY COUNSEL**

TO: Steven S. Carey, Respondent, Greetings:

YOU ARE HEREBY NOTIFIED that the Office of Disciplinary Counsel for the State of Montana has filed with the Supreme Court of the State of Montana its Formal Complaint against you pursuant to Rule 12 of the Rules for Lawyer Disciplinary Enforcement (2002), a copy of which Complaint is attached hereto.

YOU ARE HEREBY COMMANDED to make and file with the Clerk of this Court your written answer to said Complaint within twenty (20) days from and after service upon you of this Citation and a copy of said Complaint as provided by Rule 18, RLDE (2002).


Any procedural motions, for example, a Motion for Extension of Time within which to Answer the Complaint, filed by you or by your Counsel prior to the filing of the Findings, Conclusions, and Recommendations of the Commission on Practice, shall be addressed to and

1 filed with Shauna Ryan, Commission on Practice, P.O. Box 203002, Helena, MT 59620-3002,
2 and served upon the Office of Disciplinary Counsel, P.O. Box 1099, Helena, MT 59624-1099,
3 as provided by Rule 18, RLDE (2002).

4 In the event of your failure to file an answer within the time prescribed, you will be held
5 and deemed in default as provided by Rule 12B(2), RLDE (2002).

6 WITNESS my hand and seal of this Court this 29th day of June, 2009.

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8
9 (COURT SEAL)
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ED SMITH,
Clerk of the Supreme Court
Of the State of Montana

By:  Deputy